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IN THE

Supreme Court of the United States.

ORIGINAL JURISDICTION.

OCTOBER TERM, 1925.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, STATE OF PENNSYLVANIA,
Complainants,

vs.

STATE OF ILLINOIS, SANITARY DISTRICT OF CHICAGO, STATE OF MISSOURI, STATE OF TENNESSEE, STATE OF KENTUCKY, and STATE OF LOUISIANA,
Defendants.

In Equity.
Original Jurisdiction.
[redacted] 7

MOTION OF THE STATES OF MISSOURI, KENTUCKY, TENNESSEE AND LOUISIANA, TO DISMISS THE AMENDED BILL OF COMPLAINT.

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STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, STATE OF PENNSYLVANIA, Complainants, vs. STATE OF ILLINOIS, SANITARY DISTRICT OF CHICAGO, STATE OF MISSOURI, STATE OF TENNESSEE, STATE OF KENTUCKY, and STATE OF LOUISIANA, Defendants.	In Equity. Original Jurisdiction. No. 16.

MOTION OF THE STATES OF MISSOURI, KENTUCKY, TENNESSEE AND LOUISIANA, TO DISMISS THE AMENDED BILL OF COMPLAINT.

These defendants, the States of Missouri, Tennessee, Kentucky and Louisiana, respectfully move the Court to dismiss the amended bill of complaint heretofore filed in the above entitled cause, for want of jurisdiction and

upon other grounds that appear upon the face of said amended bill, and for the specific grounds of this motion, show:

First. That it appears upon the face of said amended bill of complaint that this is not a case justiciable in this Honorable Court when exercising its original jurisdiction under the Constitution of the United States.

Second. That it appears upon the face of said amended bill of complaint that the subject matter thereof relates to the navigability of certain of the navigable waters of the United States, over which the United States has superior, supreme and exclusive jurisdiction; and that the United States has assumed and is exercising such jurisdiction.

Third. That it appears upon the face of the amended bill that the diversion complained of therein is being made pursuant to a written permit therefor, duly issued and "authorized by the Secretary of War" and "recommended by the Chief of Engineers" of the United States, acting pursuant to the authority and provisions of the "Rivers and Harbors Act" of Congress of 1899, by which Act of Congress of the United States, as this Honorable Court has held in respect of this same diversion, in the case of Sanitary District v. United States, 266 U. S. 405, has validly conferred upon said officials the power, exclusive of any action by any state, to permit, regulate and control the amount and conditions of such diversion; and

that said permit constitutes a valid and legal authorization by the United States of said diversion.

Fourth. That the amended bill does not state facts sufficient to entitle the compláinants to the equitable relief prayed for, or any part thereof, for the reasons:

(a) That, in so far as said amended bill seeks an injunction to restrain the permanent diversion from Lake Michigan of any water whatever, it relates solely to a subject matter over which the Congress, as this Honorable Court has held, has exclusive jurisdiction which has been assumed, and is being exercised, by the United States.

(b) That, in so far as said amended bill seeks to have this Honorable Court determine the amount of diversion "reasonably required" for navigation, it calls for a usurpation by this Honorable Court of powers and functions vested by the Constitution in the Congress and by the Congress delegated to the Secretary of War upon the recommendation of the Chief of Engineers.

(c) That insofar as said amended bill seeks relief against alleged damage to navigation on the Great Lakes from alleged lowering of the levels thereof, alleged to be due to said diversion of water from Lake Michigan, or against alleged damage to navigation on the Chicago River, on the Sanitary and Ship Canal of defendant District, or on the DesPlaines, Illinois and Mississippi Rivers,

from alleged pollution thereof, it appears from said amended bill that complainants are merely private litigants who seek to restrain an alleged public nuisance, although neither of said complainant states, nor any of their respective citizens, suffer or can suffer any direct, peculiar or special injury different from the alleged injury to the general public. That the exclusive power to protect the navigable condition of all these navigable waters is vested in the United States, and such power is being exercised by the United States; and that none of the complainant states, nor any of the citizens thereof, have any remedy in equity to control or interfere with the said exclusive power of the United States.

(d) That as to alleged pollution of the waterway leading from Lake Michigan to the Gulf of Mexico, by the use of the same for the disposal of the sewage of the City of Chicago, such waterway lies wholly without and below all of the complaining states, and none of said states have any direct or proprietary interest in the navigable condition of said waterway; that the exclusive power to protect the navigable condition of these navigable waters is vested in the United States, and in respect of said alleged pollution, such power is being exercised by the United States; and that none of the complainant states, nor any of the citizens thereof, have any remedy in equity to control or interfere with the said exclusive power of the United States.

Fifth. That none of the complainant states have any right of action in equity to complain of any alleged breach or breaches of the conditions of said permit of March 3, 1925, because the power to enforce such conditions is vested solely and exclusively in the United States, because said permit is revocable by the Secretary of War if and when the conditions thereof are breached, and because said Rivers and Harbors Act of 1899 itself provides adequate, available, special and exclusive remedies for violations of said act.

Sixth. That it affirmatively appears from the face of the amended bill that the United States is a necessary and indispensable party to this suit.

Seventh. That the rights asserted and the relief sought in and by the amended bill are contrary to, and inconsistent with, the rights asserted and the relief sought in and by the original bill herein, in the respect that the original bill conceded and admitted the right of the defendants to a diversion not in excess of four thousand one hundred and sixty-seven (4,167) cubic feet per second, and also to a diversion in excess of said amount, if and when the Congress of the United States or the Secretary of War, acting upon the recommendation of the Chief of Engineers, should so permit, whereas, the amended bill denies such right of the defendants, and that, therefore, the complainants are now estopped from denying the said right of the defendants and from seeking the relief as prayed for in said amended bill.

Eighth. That it appears upon the face of said amended bill of complaint that the States of Wisconsin, Ohio, Pennsylvania and Minnesota have no lawful right to join in the prosecution of this action; that if there be, in fact, any cause of action stated in said amended bill, which this defendant denies, it is a separate and independent cause, peculiar to each complaining state, and not a joint cause; that said bill is multifarious.

Ninth. That the said amended bill of complaint is in other respects uncertain, informal and insufficient, and it does not state facts sufficient to entitle the said States of Wisconsin, Ohio, Pennsylvania and Minnesota, or either of them, to the equitable relief prayed for in said bill.

Wherefore, these defendants, the States of Missouri, Tennessee, Kentucky and Louisiana, respectfully pray that this Honorable Court will not take further cognizance of this cause, but will dismiss said amended bill of complaint, and that these defendants be hence dismissed with their costs.

And these defendants not being certainly advised whether the insufficiency of said amended bill in the respects herein set forth, should be tested by motion to dismiss or by demurrer, respectfully request, in case it be held

that such insufficiency should be tested by demurrer, that then this Honorable Court will treat this motion to dismiss as a demurrer.

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